

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 16

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MAY 12, 1982

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THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

# U.S. Customs Service

## Treasury Decisions

(T.D. 82-81)

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Quarter beginning: January 1, 1982 through March 31, 1982.

Country	Name of currency	U.S. dollars
Australia .....	Dollar .....	1.1290
Austria .....	Schilling .....	.063980
Belgium .....	Franc .....	.026205
Brazil .....	Cruzeiro .....	.008117
Canada .....	Dollar .....	.842744
China, P.R. ....	Renminbi yuan .....	.571461
Denmark .....	Krone .....	.136612
Finland .....	Markka .....	.231374
France .....	Franc .....	.175871
Germany .....	Deutsche mark .....	.446170
Hong Kong .....	Dollar .....	.176523
India .....	Rupee .....	.110254
Iran .....	Rial .....	NA
Ireland .....	Pound .....	1.5825
Italy .....	Lira .....	.000836
Japan .....	Yen .....	.004571
Malaysia .....	Dollar .....	.446030
Mexico .....	Peso .....	.038052
Netherlands .....	Guilder .....	.406669
New Zealand .....	Dollar .....	.8270
Norway .....	Krone .....	.172712
Philippines .....	Peso .....	.121803
Portugal .....	Escudo .....	.015385
Republic of So. Africa .....	Rand .....	1.0508
Singapore .....	Dollar .....	.488998
Spain .....	Peseta .....	.010412

Country	Name of currency	U.S. dollars
Sri-Lanka .....	Rupee .....	.049493
Sweden .....	Krona .....	.181291
Switzerland .....	Franc .....	.558191
Thailand .....	Baht (tical) .....	.043384
United Kingdom .....	Pound .....	1.9260
Venezuela .....	Bolivar .....	.232775

(LIQ-03-01 O:C:E)

Dated: January 1, 1982.

ANGELA DE GAETANO,  
*Chief,*  
*Customs Information Exchange.*

(T.D. 82-82)

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Quarter beginning: April 1, 1982 through June 30, 1982.

Country	Name of currency	U.S. dollars
Australia .....	Dollar .....	1.0520
Austria .....	Schilling .....	.059207
Belgium .....	Franc .....	.022056
Brazil .....	Cruzeiro .....	.006747
Canada .....	Dollar .....	.815195
China, P.R. ....	Renminbi yuan .....	.534131
Denmark .....	Krone .....	.121566
Finland .....	Markka .....	.216661
France .....	Franc .....	.159898
Germany .....	Deutsche mark .....	.416181
Hong Kong .....	Dollar .....	.171733
India .....	Rupee .....	.106952
Iran .....	Rial .....	NA
Ireland .....	Pound .....	1.4405
Italy .....	Lira .....	.000757
Japan .....	Yen .....	.004062
Malaysia .....	Dollar .....	.428266
Mexico .....	Peso .....	.021906



Country	Name of currency	U.S. dollars
Netherlands.....	Guilder.....	.374883
New Zealand .....	Dollar .....	.7678
Norway .....	Krone .....	.163867
Philippines .....	Peso .....	.119617
Portugal.....	Escudo.....	.013680
Republic of So. Africa .....	Rand.....	.9495
Singapore .....	Dollar .....	.469925
Spain .....	Peseta .....	.009346
Sri-Lanka .....	Rupee.....	.048309
Sweden.....	Krona.....	.168890
Switzerland .....	Franc.....	.515198
Thailand.....	Baht (tical).....	.043384
United Kingdom .....	Pound.....	1.7900
Venezuela.....	Bolivar .....	.232558

(LIQ-03-01 O:C:E)

Dated: April 1, 1982.

ANGELA DE GAETANO,  
*Chief,*  
*Customs Information Exchange.*

(T.D. 82-83)

### Bonds

Approval and Discontinuance of Consolidated Aircraft Bonds (Air Carrier Blanket Bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 22, 1982.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Transport Aereos Portuguese S.A.R.L., d.b.a.: TAP Portuguese Airways in North America, 1140 Ave. of the Americas; American Casualty of Reading, PA (PB 6/2/76) D 4/1/82 <sup>1</sup> The foregoing principal has been designated as a carrier of bonded merchandise.	Apr. 1, 1982	Apr. 1, 1982	New York Seaport \$100,000
Venezuelan International Airlines (VIASA), 1401 Brickell Ave., Miami, FL; Peerless Ins. Co. (PB 4/25/74) D 3/24/82 <sup>2</sup> The foregoing principal has not been designated as a carrier of bonded merchandise.	Mar. 25, 1982	Mar. 25, 1982	JFK Airport, NY \$100,000

<sup>1</sup> Surety is Sentry Ins. A Mutual Co.

<sup>2</sup> Surety is Federal Ins. Co.

BON-3-01

MARILYN G. MORRISON,  
*Director,*  
*Carriers, Drawback and Bonds Division.*

(T.D. 82-84)

#### Notice of Recordation of Trade Name

##### SON-EXPORT, S.A. de C.V.

On December 17, 1981, there was published in the Federal Register (46 FR 61532) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "SON-EXPORT, S.A. de C.V." The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "SON-EXPORT, S.A. de C.V." is hereby recorded as the trade name of Son-Export S.A. de C.V., a company governed by the laws of the Republic of Mexico, located at Plutarco Elias Calles y Rosales #124, Desp. 3003, Hermosillo, Sonora, Mexico. The trade name is applied to fresh frozen shellfish (shrimp).

Dated: April 27, 1982.

A. PIAZZA  
(For Donald W. Lewis, Director,  
Entry Procedures and Penalties Division).

[Published in the Federal Register May 4, 1982 (47 FR 19261)]

(T.D. 82-85)

## Bonds

Approval and Discontinuance of Bonds on Customs Form 7587 for the Control of Instruments of International Traffic of a Kind Specified in Section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 28, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Allis Chalmers Corp., P.O. Box 512, Milwaukee, WI; Federal Ins. Co.	Mar. 19, 1982	Mar. 23, 1982	Milwaukee, WI \$25,000
Betteroads Asphalt Corp., Road 845, Km. 16, Cupey Bajo, Rio Piedras, PR; CNA Casualty of Puerto Rico	Mar. 17, 1982	Mar. 31, 1982	San Juan, PR \$10,000
David Bleich Co., P.O. Box 106, Woodland Hills, CA; Old Republic Ins. Co.	Feb. 23, 1981	Feb. 23, 1981	Seattle, WA \$10,000
Boise-Griffin Agencies Inc., 5 Marine View Plaza, Hoboken, NJ; American Casualty Co. of Reading, PA	Mar. 2, 1982	Mar. 3, 1982	New York Seaport \$10,000
Boise-Griffin Steamship Co., Inc., One World Trade Center, NY, NY; Federal Ins. Co. D 2/1/82	Oct. 10, 1975	Sept. 12, 1975	New York Seaport \$10,000
R. Burkholder, Lititz, PA; St. Paul Fire & Marine Ins. Co. D 3/24/82	Feb. 27, 1976	Mar. 2, 1976	Buffalo, NY \$10,000
Conoco, Inc., Five Freeway Plaza East, P.O.B. 2197, Houston, TX; Old Republic Ins. Co.	Mar. 16, 1982	Mar. 17, 1982	New Orleans, LA \$10,000
FMC Corp., 2000 Market St., Philadelphia, PA; Washington International Ins. Co.	Mar. 23, 1982	Mar. 30, 1982	Philadelphia, PA \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Harrington & Co., Inc., 820 N.E. 2nd Ave., Miami, FL; Fidelity & Deposit Co. of MD (PB 4/1/76) D 3/31/82 <sup>1</sup>	Mar. 31, 1982	Mar. 31, 1982	Miami, FL \$10,000
Hesston Corp., Hesston, KS; Hartford Accident & Indemnity Co.	Oct. 29, 1981	Feb. 16, 1982	St. Louis, MO \$10,000
Industrial Mineral Ventures Inc., Suite 107, 1800 E. Sahara, Las Vegas, NV; St. Paul Fire & Marine Ins. Co. D 3/11/82	Sept. 12, 1979	Sept. 18, 1979	Pembina, ND \$10,000
Lavino Shipping Agencies, Inc., 3 Penn Center Plaza, Phila, PA; Peerless Ins. Co. (PB 3/20/80) D 3/20/82 <sup>2</sup>	Mar. 20, 1982	Mar. 30, 1982	Philadelphia, PA \$10,000
Monsanto International Sales Co. & Monsanto Europe S.A., 800 N. Lindbergh Blvd., St. Louis, MO; St. Paul Fire & Marine Ins. Co. (PB 1/5/72) D 3/30/82 <sup>3</sup>	Jan. 5, 1982	Mar. 17, 1982	New Orleans, LA \$50,000
S.E.L. Maduro (Florida), Inc., 10th Floor, Suite 1001, Miami, FL; St. Paul Fire & Marine Ins. Co. D 7/21/81	July 21, 1978	July 24, 1978	Miami, FL \$50,000
Sprague Electric Co., North Adams, MA; Continental Ins. Co.	Mar. 8, 1982	Apr. 2, 1982	Boston, MA \$10,000
TTT Ship Agencies, Inc., 71 Broadway, New York, NY; Commercial Union Ins. Co. (PB 3/1/76) D 1/29/82 <sup>4</sup>	Jan. 29, 1982	Feb. 1, 1982	New York Seaport \$10,000
Universal Pioneer Freight Systems Inc., 345 Hudson St., New York, NY; American Motorist Ins. Co. (PB 2/1/73) D 3/22/82 <sup>5</sup>	Mar. 22, 1982	Mar. 30, 1982	New York Seaport \$20,000

<sup>1</sup> Surety is St. Paul Fire & Marine Ins. Co.

<sup>2</sup> Surety is The Home Indemnity Co.

<sup>3</sup> Principal is Monsanto Co. & its wholly owned subs: Monsanto International Sales Co. & Monsanto Europe S.A.

<sup>4</sup> Surety is Fireman's Fund Ins. Co.

<sup>5</sup> Principal is Universal Carloading & Distributing Co., Inc.

Bon-3-10

MARILYN G. MORRISON,  
*Director,*  
*Carriers, Drawback and Bonds Division.*

# U.S. Customs Service

## *Proposed Rulemaking*

19 CFR Parts 141 and 142

Proposed Amendments to the Customs Regulations Relating to  
Importations of Certain Large Machines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the importation of large machines. The proposal would allow an importer to request in writing that certain machines, which because of their immense size and other factors are imported in separate shipments, be classified and dutiable as a complete machine under its particular item number in the Tariff Schedules of the United States. The importer's request would be subject to approval by the Commissioner of Customs. Presently, parts or components of a complete machine which are imported in separate shipments are classifiable and dutiable as parts or components rather than as a complete machine. The action is necessary to give full effect to the specific provision in the Tariff Schedules for the named machine.

DATES: Comments must be received on or before (60 days from date of publication in the Federal Register).

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: James A. Seal, Classification and Value Division (202-566-8181). Operational Aspects: Herbert H. Geller, Duty Assessment Division (202-566-5307). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

The Administrative Procedure Act provides that each agency shall give an interested person the right to petition for the issuance of a rule (5 U.S.C. 553(e)). The Customs Service has received a petition from a member of the public regarding the tariff classification of Fourdrinier papermaking machines. After due consideration, Customs has determined that a notice of proposed rulemaking is appropriate in this instance and the document which follows was prepared in response to that request.

All merchandise imported into the customs territory of the United States is subject to duty or duty-free entry in accordance with its classification under the applicable item in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The TSUS is divided into various schedules, parts, and subparts, separately dealing with merchandise in broad categories.

The present Customs Service practice is to treat large machines imported in several shipments as a series of separate articles for the purpose of tariff classification. This practice is in accord with the present limitation on the longstanding judicial "doctrine of entireties," that merchandise imported in more than one shipment cannot be classified as an entirety, but rather that each shipment is classified separately. Tariff classification and duty rate are determined shipment by shipment. As a result, in some cases a very large machine imported in several shipments will not be classified under a named provision in the TSUS for the machine. Rather, each part or component will be classified under the TSUS item that most specifically describes the particular part or component.

For example, Schedule 6, Part 4, Subpart D, TSUS, sets forth the item numbers and rates of duty for pulp and paper machinery, bookbinding machinery, and printing machinery. TSUS item number 668.00 specifically pertains to machines for making cellulosic pulp, paper, or paperboard, e.g., Fourdrinier papermaking machines which are within the scope of this proposal.

The modern Fourdrinier papermaking machine is actually a composite of numerous interrelated machines, each performing a specialized operation in the process of producing a finished paper or board product from pulp. The typical Fourdrinier papermaking machine as installed, and independent of the building housing it, weighs as much as 10,000,000 pounds and occupies as much as 2,310,000 cubic feet. While many of the subsections are assembled by the manufacturer, industry practice is that larger components are assembled after delivery to the site and not prior to shipment.

According to an importer of those machines, the primary reasons for assembly at the site are:

1. A customer could not, in a short period of time, erect an entire machine at a site even if the machine was delivered in a single shipment. Great care must be exercised in erecting a papermaking machine to ensure that each of the components interfaces properly.

The first machine component erected is normally the first dryer cylinder which is positioned at about the center of the machine. The other components are installed progressively "upstream" and "downstream" from the first dryer cylinder.

2. The size of many components prevents shipment as a unit. A single dryer cylinder six feet in diameter, having walls four inches thick and a length of 420 inches with journals and housings attached, will weigh about 56,000 pounds. A typical dryer section will consist of as many as 100 such cylinders. An assembled dryer section occupies a space 50 to 60 feet in width, 20 feet high and hundreds of feet long. Thus, it has been represented to Customs that "it is impossible to transport an assembled dryer section." This demonstrates the practical difficulty of assembling or even gathering the components of an entire machine in one place and finding a vessel large enough and with sufficient available space to transport it.

3. Manufacture of the machine can only be accomplished over an extended period of time. Even the largest manufacturers have facilities capable of casting only two cylinders per day. Thus, the dryer section of a typical machine (100 cylinders) requires ten weeks for casting alone. More complex components, such as drilled suction rolls, require greater time.

4. Erection of a papermaking machine is a time consuming process. The time span between erection of the first dryer cylinder and the initial production run is at least eight months and frequently as long as two years.

5. The significant periods of time necessary to manufacture and later to erect papermaking machines prohibit the usual commercial sequence, i.e., manufacture, delivery, erection. In the paper-making machine industry, components are manufactured, delivered, and erected in a specific order. Some components have yet to be manufactured while others are being erected at the site.

As a matter of practice, Fourdrinier papermaking machines purchased under a single contract but imported in many shipments because of their immense size and manufacturing schedule have not been classified for tariff duty purposes under the single TSUS item number, 668.00, that describes the entire machine with greatest specificity.

Accordingly, to correct this and similar situations and to give full meaning to item 668.00, and other named items in the TSUS, it is proposed to amend Parts 141 and 142, Customs Regulations (19 CFR Parts 141, 142), relating to the entry and classification of very large machine components to allow an importer to request in writing that the entire (assembled) machine be classified under the specific TSUS item. The importer's request would be subject to approval by the Commissioner of Customs. If an importer of a large machine imported in separate shipments chooses to request Customs to classify the machine as an entirety, the importer must deposit

estimated duties covering the appraised value of the entirety at the time of filing the entry summary for the initial shipment (19 U.S.C. 1484, 1505). This proposal would constitute an extension of the judicial "doctrine of entireties" which Customs believes justified by the unique nature of Fourdrinier papermaking machines, and other large machines, as described above.

#### AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended, sections 315, 448, 484, 505, 624, 46 Stat. 695, as amended, 714, as amended, 722, as amended, 759, 77A Stat. 14 (19 U.S.C. 66, 1202, (Gen. Hdnote 11, Tariff Schedules of the United States), 1315, 1448, 1484, 1624).

#### COMMENTS

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations, (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

#### EXECUTIVE ORDER 12291

The document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Secretary of the Treasury certifies that the proposed regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

In particular, Customs Office of Economic Analysis has determined that the Fourdrinier papermaking machinery in question is not manufactured by a substantial number of small entities, and that the proposal will not have a significant economic impact on those that do. In addition, the proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant inter-



est or attention from small entities through comments, either formal or informal.

#### DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### PROPOSED AMENDMENTS

It is proposed to amend Parts 141 and 142, Customs Regulations (19 CFR Parts 141, 142), in the following manner:

##### PART 141—ENTRY OF MERCHANDISE

1. Section 141.69 would be amended by adding a new paragraph (d) to read as follows:

#### 141.69 Applicable rates of duty.

\* \* \* \* \*

(d) *Large machines.* (1) At the written request of the importer, successive shipments of components of a large machine which, after assembly in the United States at the site of proposed use, constitute a complete machine, may be dutiable as an entire machine at the rate in effect at the time of entry of the initial shipment. The importer's request for such treatment must be approved by the Commissioner of Customs before the initial shipment of the merchandise.

(2) This provision shall be limited to a large machine which is:

- (i) Sold as a unit pursuant to a single contract of sale;
- (ii) Entered at one port;
- (iii) Entered in its entirety within three years of the date of entry of the initial shipment;
- (iv) Comprised of three or more shipments, and the combined shipments weighing at least 1,000 tons; and
- (v) Commercially infeasible to import in a single shipment because of size and method of manufacture, and which will be assembled at the domestic site of permanent use.

(3) If an importer of a large machine requests appraisal and classification of that machine as an entirety, the importer shall:

- (i) File an entry summary in accord with section 142.17(a)(5) of this chapter; and
- (ii) Deposit estimated duties on the appraised value of the entire machine at the time of filing the entry summary for the initial shipment in accord with section 141.101(f) of this chapter.

2. The heading of section 141.82 and paragraph (a) of that section would be amended to read as follows:

141.82 Invoice for installment shipments.

(a) *One invoice sufficient.* Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period not to exceed 10 consecutive days. The foregoing 10-day limitation does not apply to the entry of shipments of a large machine in accordance with section 141.69(d).

\* \* \* \* \*

3. Section 141.101 would be amended by adding a new paragraph (f) to read as follows:

141.101 Time of deposit.

\* \* \* \* \*

(f) *Entry of large machines.* In the case of a large machine entered in accordance with section 141.69(d) of this chapter, the importer shall deposit estimated duties on the appraised value of the entire machine at the time the entry summary for the initial shipment is filed with the appropriate Customs officer.

## PART 142—ENTRY PROCESS

1. Paragraphs (a)(4) and (b)(4) of section 142.17 would be amended to read as follows:

142.17 One entry summary for multiple entries.

(a) *Requirements.*

\* \* \* \* \*

(4) The time between the date of the first entry and the date of the last entry does not exceed one week (but see paragraph (d) of this section),

\* \* \* \* \*

(b) *Merchandise not eligible.*

\* \* \* \* \*

(4) Merchandise for which liquidation has been withheld (but see paragraph (d) of this section), and

\* \* \* \* \*

2. A new paragraph (d) would be added to section 142.17 to read as follows:

142.17 One entry summary for multiple entries.

\* \* \* \* \*

(d) *Large machines.* The limitations expressed in paragraphs (a)(4) and (b)(4) of this section do not apply to entries of the components of a large machine made in accordance with the provisions of section 141.69(d) of this chapter.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

Approved: April 21, 1982.

JOHN M. WALKER, Jr.,  
*Assistant Secretary of the Treasury.*

[Published in the Federal Register April 30, 1982 (47 FR 18621)]

# U.S. Customs Service

## *General Notice*

Performance Review Boards: Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executive employees' performance and make recommendations regarding performance and performance awards.

DATE: The Performance Review Boards become effective on May 1, 1982.

### FOR FURTHER INFORMATION CONTACT:

Alexander Faison, Director, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 3417, Washington, D.C., (202) 566-5563.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service as follows:

1. The Performance Review Board to review Senior Executives rated by the Commissioner and Deputy Commissioner (i.e., the Assistant to the Commissioner, the Special Assistants to the Commissioner, the Assistant Commissioners, and Regional Commissioners) is composed of the following members:

John Mangels—Director, Office of Operations, Department of the Treasury

William Rhodes—Director, Office of Management and Organization, Department of the Treasury

Myron Weinstein—Deputy Director, U.S. Secret Service

Stephen Higgins—Deputy Director, Bureau of Alcohol, Tobacco and Firearms

Charles C. Hackett—Assistant Commissioner, Office of Management Integrity, U.S. Customs Service

Edward F. Kwas—Assistant Regional Commissioner, (Operations), U.S. Customs Service

2. The Performance Review Board to review all other Senior Executives is composed of the following members:

George C. Corcoran, Jr.—Assistant Commissioner, Office of Border Operations, U.S. Customs Service

Alfred R. De Angelus—Assistant Commissioner, Office of Commercial Operations, U.S. Customs Service

Jack T. Lacy—Comptroller, U.S. Customs Service

William J. Griffin—Regional Commissioner, U.S. Customs Service, 100 Summer Street, Boston, Massachusetts 02110

Dennis T. Snyder—Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048

John A. Hurley—Regional Commissioner, U.S. Customs Service, 40 S. Gay Street, Baltimore, Maryland 21202

Robert N. Battard—Regional Commissioner, U.S. Customs Service, 99 S.E. 5th Street, Miami, Florida 33131

Peter J. Dispenzirie—Regional Commissioner, U.S. Customs Service, 423 Canal Street, New Orleans, Louisiana 70130

Donald Kelly—Regional Commissioner, U.S. Customs Service, 500 Dallas Street, Houston, Texas 77002

Albert G. Bergesen—Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles Street, Los Angeles, California 90053

Edward M. Ellis—Regional Commissioner, U.S. Customs Service, 211 Main Street, San Francisco, California 94105

Eugene H. Mach—Regional Commissioner, U.S. Customs Service, 55 E. Monroe Street, Chicago, Illinois 60603

Dated: April 22, 1982.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

[Published in the Federal Register April 28, 1982 (47 FR 18208)]

# United States Court of International Trade

One Federal Plaza  
New York, N.Y. 10007

*Chief Judge*

EDWARD D. RE

*Judges*

Paul P. Rao  
Morgan Ford  
Frederick Landis  
James L. Watson

Herbert N. Maletz  
Bernard Newman  
Nils A. Boe

*Senior Judge*

SAMUEL M. ROSENSTEIN

*Clerk*

Joseph E. Lombardi

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## Decisions of the United States Court of International Trade

(Slip Op. 82-25)

BAR ZEL EXPEDITERS, INC., A/C BEN CLEMENTS & SONS, INC.,  
PLAINTIFF v. UNITED STATES, DEFENDANT

Court No. 74-6-01542

Before RE, Chief Judge.

*Fasteners*

## STARE DECISIS

Although the courts are open to consider all proper and pertinent matters which bear upon the issue of possible error in earlier decisions, such matters when presented must be clear and convincing. *United States v. Dodge & Olcott, Inc.*, 47 CCPA 100, C.A.D. 737 (1960). Despite a more expansive record in the present case on whether plastic fasteners were properly classifiable as sew-on fasteners under item 745.63 of the tariff schedules, the presumption of correctness was not rebutted, nor a clear and convincing show of error made in the holding of *Kimball Systems, Inc. v. United States*, 80 Cust. Ct. 54, C.D. 4738 (1978), which considered the same issue and held the fasteners to fall within the common meaning of the term "clasps." The holding in *Kimball* is therefore *stare decisis* of the present action.

## COMMON MEANING

The common meaning of a tariff term is a question of law to be decided by the court which may consult dictionaries and other lexicographic authorities. "A common meaning, having been once established and determined by a court, will be presumed to continue until the language is changed by subsequent legislation." *United States v. Great Pacific Co.*, 23 CCPA 319, 324, T.D. 48192 (1936).

## COMMERCIAL DESIGNATION

A party who seeks to establish a commercial designation for merchandise must not only show that such designation differs from the common meaning of the term, but must also demonstrate what is the commercial designation. *United States v. Fung Chong Co.*, 34 CCPA 40, C.A.D. 342 (1946); *Heads and Threads, Division of MSL Industries, Inc. v. United States*, 60 Cust. Ct. 308, C.D. 3374, 282 F. Supp. 484 (1968). In view of the totally inconclusive evidence on the question of commercial designation in the present record, plaintiff did not discharge its burden of proving that the imported plastic fasteners fell within a commercial designation different from the common meaning of "clasps" or "sew-on fasteners."

## CONGRESSIONAL INTENT

Under the President's Executive Order 12032, Congress clearly manifested its intent that the imported plastic fasteners were classifiable as sew-on fasteners under the successor provisions to item 745.63. The court must accord appropriate deference to Presidential action which finds authority in specific statutes, and recognizes that Congress has delegated "the exercise of much of the power to regulate foreign commerce to the Executive." See *United States v.*

*Yoshida International, Inc.*, 63 CCPA 15, 22, C.A.D. 1160, 526 F.2d 560 (1975).

[Judgment for defendant.]

(Decided April 16, 1982)

*Rivkin Sherman and Levy* (Joseph S. Kaplan and Dorothy Park Watson at the trial; Joseph S. Kaplan and Charles H. Bayar on the briefs) for the plaintiff. *Kaplan and Pellegrini* were substituted as attorney of record on June 15, 1981.

J. Paul McGrath, Assistant Attorney General; Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (Susan Handler-Menahem at the trial and on the brief), for the defendant.

RE, *Chief Judge*: The question presented pertains to the proper classification, for customs duty purposes, of certain imported merchandise invoiced on shipment from Italy as "Tach-It Barbs," and from Japan as "Tach-It Nylon Tag Pins." The parties agree that the merchandise consists of plastic fasteners. The fasteners are produced in clips suitable for use in a mechanical attaching device referred to as a "gun." They have a single filament shaft with a flat paddle shape at one end, and a cylindrical retainer perpendicular to the filament shaft at the other end.

The merchandise was classified by the Customs Service under the superior heading for "clasps" as "sew-on fasteners" under item 745.63 of the Tariff Schedules of the United States, as modified by T.D. 68-9, and assessed with duty at 27.5% ad valorem. Plaintiff contests that classification with its consequential rate of duty and contends that the merchandise should properly be classified as other plastic articles not specially provided for under item 774.60, TSUS, as modified by T.D. 68-9, with the rate of duty of 8.5% ad valorem.

The defendant maintains that the customs classification is not only presumed to be correct, but that it has established that it is correct, and should be sustained. Alternatively, defendant maintains that if the customs classification is not sustained, the merchandise is dutiable under item 745.65, TSUS, as modified by T.D. 68-9, as "clasps" other than the articles provided for in item 745.63, TSUS, with duty at the rate of 13.5% ad valorem.

Plaintiff contends in the alternative that, if the court concludes that the merchandise is to be classified as clasps, defendant's alternative claim under item 745.65, TSUS, is the proper classification.

The pertinent provisions of Schedule 7, TSUS, read as follows:

"SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND  
NONENUMERATED PRODUCTS

\* \* \* \* \*



PART 7.—BUTTONS, BUCKLES, PINS, AND OTHER FASTENING  
DEVICES; \* \* \*

Subpart A.—Buttons, Buckles, Pins, Hooks and Eyes, and Slide  
Fasteners

\* \* \* \* \*  
Clasps, handbag and similar frames incorporating clasps,  
and snap fasteners; all the foregoing and parts thereof:  
Valued not over 20 cents per dozen pieces or parts:

[Classified by the Customs Service]

745.63 Sew-on fasteners, and parts thereof... 27.5% ad val.

[Claimed in the alternative by plaintiff and defendant]

745.65 Other ..... 13.5% ad val.

\* \* \* \* \*

[Plaintiff's principal claim]

PART 12.—RUBBER AND PLASTICS PRODUCTS

\* \* \* \* \*

Subpart D.—Articles Not Specially Provided for, of Rubber or  
Plastics

Articles not specially provided for, of rubber or plastics:

\* \* \* \* \*

774.60 Other ..... 8.5% ad val."

The parties have agreed in a pre-trial statement that the merchandise is "identical in all material respects" to that which was the subject of *Kimball Systems, Inc. v. United States*, 80 Cust. Ct. 54, C.D. 4738 (1978). It was also agreed that—

"[f]or application, a clip of Tach-Its is inserted into a fastening device, or 'gun,' which is equipped with a hollow slotted or grooved needle. The needle is inserted into or through the articles and the plastic fastener is propelled the length of the needle, thereby penetrating the articles. The needle is then withdrawn, and the plastic fastener remains inserted through the articles. Tach-Its and similar plastic fasteners have protrusions at either end which prevent them from falling out after insertion."

The record in *Kimball*, as well as the present record, has established that the fastening procedure is used in lieu of hand or machine sewing to fasten labels into garments, and to pair and fasten two or more articles, such as shoes. It has also been established that when the merchandise was first marketed by plaintiff, one of its intended uses was to replace string tags and the sewing needle procedures by which string tags were previously attached.

In *Kimball*, the imported plastic fasteners were also classified under the superior heading for "clasps" as "sew-on fasteners" under item 745.63, and plaintiff's claim was also for classification under item 774.60 as other plastic articles not specially provided for. The defendant alternatively sought classification under item 745.65 as "clasps" other than the articles provided for in item 745.63. The court held that the plaintiff failed to overcome the presumption of correctness which attached to the classification of the merchandise as "sew-on fasteners," and that the merchandise fell within the common meaning of the term "clasp" which the court described as an item that fastens or joins two things or parts of things. Hence, the customs classification of the merchandise was sustained.

It is well to review the reason for the court's holding in *Kimball*. Although the merchandise therein was classified as "sew-on fasteners," the primary issue before the court was whether, as claimed by the plaintiff, "releasability" was required for the imported merchandise to be classified as "clasps." The presumption of correctness that attached to the classification as "sew-on fasteners" included a presumption of correctness that the importations were "clasps" in the first instance. Because of the "limited experience and expertise" of plaintiff's only witness, the court relied primarily on the lexicographic definitions of "clasp," and held that since releasability was not required under those definitions, plaintiff failed to overcome the presumption of correctness that the merchandise was "sew-on fasteners," as classified. In *Kimball* the court stated, "Even if it were to be assumed \* \* \* that the lexicographic authorities were inconclusive, plaintiff has not submitted convincing expert testimony to overcome the presumption of correctness that attaches to the classification of the customs officials and the supporting evidence introduced by the defendant." 80 Cust. Ct. at 60.

The plaintiff in the present action has produced numerous witnesses and exhibits in support of its claim that the court in *Kimball* was in error with respect to the common meaning for "clasps." Plaintiff also contends that, even if the common meaning for "clasps" was correctly stated in *Kimball*, "the commercial meaning of 'clasps' is different and narrower since [the imported] tag fasteners are not known as 'clasps' in trade and commerce."

The question before this court, however, is not whether the imported plastic fasteners are known as "clasps" in trade or commerce, but whether plaintiff has established a commercial meaning

for "clasps" different from the common meaning stated in *Kimball*. If plaintiff has not established a commercial designation for "clasps" or "sew-on fasteners" which would exclude the imported plastic fasteners, the second question before the court is whether the holding of the *Kimball* decision should be followed under the doctrine of *stare decisis*.

The court has concluded that plaintiff has not established a commercial designation for "clasps" or "sew-on fasteners" which excludes the imported plastic fasteners. The court has also concluded that plaintiff has not made a clear and convincing showing that the holding of *Kimball* was erroneous. Since it is the determination of the court that plaintiff has not proven that the imported plastic fasteners were incorrectly classified, the classification is sustained.

### *Commercial Designation*

It is well established that if the words used in tariff acts to designate particular kinds or classes of merchandise have a widely known meaning in trade and commerce different from their common meaning, the commercial meaning prevails unless Congress clearly manifested a contrary intent. *Cadwalader v. Zeh*, 151 U.S. 171 (1894); *Nylos Trading Co. v. United States*, 37 CCPA 71, C.A.D. 422 (1949); *I. Shalom & Co. v. United States*, 22 CCPA 85, 87, T.D. 47067 (1934).

Proof of commercial designation of imported merchandise is a question of fact to be established in each case. *Daniel Green Shoe Co. v. United States*, 58 Cust. Ct. 7, C.D. 2868 (1967). It is also presumed that the common meaning and commercial meaning of terms employed in the tariff acts are the same. In order to prove commercial designation, it must be proved that a tariff term has a meaning in the trade and commerce of the United States different from its common meaning, and that the commercial meaning is definite, uniform and general throughout the United States. *Green, supra*; *United States v. Armand Schwab & Co.*, 30 CCPA 72, C.A.D. 218 (1942). Plaintiff contends that the commercial meaning of the terms "clasps" and "sew-on fasteners" differs from their common meaning. There is no question that the plaintiff must bear the burden of proof on this issue. *Heads and Threads, Division of MSL Industries, Inc. v. United States*, 60 Cust. Ct. 308, C.D. 3374, 282 F. Supp. 484 (1968); *Fung Chong Co. v. United States*, 15 Cust. Ct. 37, C.D. 937 (1945), *aff'd*, 34 CCPA 40, C.A.D. 342 (1946).

The thrust of plaintiff's efforts, however, has been to prove that the imported fasteners are not known in trade and commerce as "clasps" or "sew-on fasteners." In *Heads and Threads* it was stated that "[t]his rule of commercial designation 'was intended to apply to cases where the trade designation is so universal and well understood that the Congress, and all the trade, are supposed to have been fully acquainted with the practice at the time the law was en-

acted.' [Citations omitted.]" 60 Cust. Ct. at 313. Judge Maletz, writing for the court, stated:

"[W]here a party seeks to establish that merchandise is not included within the commercial [common] meaning of a tariff term, it is requisite that his proof show first, that the term had a commercial meaning in the trade differing from its common meaning; second, what that commercial meaning was; and third, that that meaning did not include the merchandise in controversy. \* \* \* *It is not sufficient to show that at or prior to the enactment of the tariff law, the merchandise was always known by a name other than the tariff term.* (Emphasis added.) 60 Cust. Ct. at 314.

The principle is illustrated in the *Fung Chong* case, wherein kumquat oranges were classified as prepared or preserved fruit. Plaintiff challenged the classification, and contended that they were within the common meaning of the term "oranges" and should have been classified as "oranges." The defendant admitted that the common meaning of "oranges" included kumquats, but introduced testimony to the effect that the commercial meaning of "oranges" did not include kumquats. The Customs Court held that defendant's evidence had not established a commercial meaning for the term "oranges," and sustained plaintiff's protest.

On appeal, the Court of Customs and Patent Appeals affirmed the Customs Court in holding that the government had not borne the burden of establishing a commercial designation, and stated:

"In the absence of any testimony as to the commercial meaning of the term 'orange,' the statement of the witnesses that the involved merchandise was excluded from that term is insufficient to prove commercial designation. [Citations omitted.]" 34 CCPA at 44.

Both *Heads and Threads* and *Fung Chong* teach that in establishing a commercial designation of merchandise, it is not sufficient merely to show that the merchandise does not fall within an undefined commercial meaning different from the common meaning. It is necessary that claimant establish what is the commercial designation for that merchandise.

In the case at bar, plaintiff is in a position similar to that of the defendant in *Fung Chong*. Although the plaintiff has introduced witnesses who have stated that the merchandise is not known as "clasps" or "sew-on fasteners" in trade and commerce, it has not introduced testimony which the court deems sufficient, credible and reliable to establish a commercial designation for "clasps" or "sew-on fasteners." The fact that, in the opinion of plaintiff's witnesses, the plastic fasteners are not known in the trade as "clasps" or "sew-on fasteners" is not proof of commercial designation. Not only is much of that testimony contradictory and inconclusive on the question of commercial designation, but it also fails to establish a commercial designation for "clasps" or "sew-on fasteners" that is

definite and uniform throughout the United States. In view of the totally inconclusive evidence on the question of commercial designation, plaintiff has not borne its burden of proving that the imported fasteners fall within a commercial designation different from the common meaning of "clasps" or "sew-on fasteners."

### *Stare Decisis*

Since the plaintiff has not discharged its burden on the issue of commercial designation, the court must address the question whether the holding in *Kimball*, as contended by the defendant, is *stare decisis* of the present action. Plaintiff claims the holding is clearly erroneous, and therefore should not govern the disposition of this case.

On the applicability of the doctrine of *stare decisis*, in *United States v. Dodge & Olcott, Inc.*, 47 CCPA 100, 103, C.A.D. 737 (1960), the Court of Customs and Patent Appeals has stated:

"While we always are open to consider all proper and pertinent matters which bear upon the issue of possible error in an earlier decision, such matters when presented must be *clear and convincing*. It is unfair both to the courts and to the parties litigant that there be a re-adjudication of issues previously determined except upon a *clear and convincing showing of error*. This requirement is not satisfied by a reargument of the former issues on the same or a merely cumulative record." (Emphasis added.)

The court, of course, will consider all matters carefully, and will not apply precedent blindly.

In *Kimball*, the merchandise was identical to the imported merchandise in this case, and, except for the issue of commercial meaning, plaintiff's and defendant's contentions were also identical to those in the present case. The court, nevertheless, will consider whether the holding in *Kimball* is erroneous, and reexamine the questions considered in *Kimball* in light of the expanded record of the present case.

The questions considered in *Kimball* were whether the fasteners fell within the common meaning of the term "clasps," and whether they had been properly classified as "sew-on fasteners" under item 745.63. Plaintiff argued in *Kimball* that the fasteners did not come within the common meaning of "clasps" because they were not releasable, and were not generally bought, sold or referred to as "clasps." The court, after consulting various lexicographic authorities, concluded that releasability was not required, and stated:

"Thus, despite plaintiff's arguments to the contrary, the clear lexicographic authorities indicate that releasability is not required for an article to be considered a clasp. According to most dictionaries, the only requirement is that the item fasten or join two parts or things." 80 Cust. Ct. at 60.

Even if the lexicographic authorities had been considered inconclusive by the court, the expert testimony offered by plaintiff was determined to be insufficient to overcome the statutory presumption of correctness.

In the present action, in contending that *Kimball* is not controlling and should not be followed, plaintiff maintains that the court in *Kimball* focused attention solely on the releasability aspect of the common meaning of the term "clasps," and not on other important aspects of the definition of the term. According to the plaintiff, under better lexicographic authority, the fasteners before the court are not "clasps." Secondly, plaintiff refers to the testimony of defendant's witness, Professor Kahn, who testified both in *Kimball* and in the present case, that the fasteners were "sew-on fasteners." Plaintiff submits that Professor Kahn's testimony was based on the fact that the plastic fasteners were affixed to material by a sewing process, whereas plaintiff claims that the sewing process requires a needle and thread. Plaintiff urges that the part of the gun used for attaching the fasteners is not a needle and that the fasteners are not thread. Thus, it maintains that the process of affixing the fasteners is not sewing, and since the fasteners are not sewn on, they are not "sew-on fasteners."

The court in *Kimball* did not define "sewing," nor determine the common meaning of the term "sew-on fasteners." Rather, it held that plaintiff's evidence was not sufficient to support a conclusion that the plastic fasteners were not "sew-on fasteners." In addition to reexamining its holding as to the common meaning for "clasps," the court, therefore, in the present case, may determine whether the plastic fasteners are "sew-on fasteners," as classified.

### *The Clasp Issue*

On the "clasp" issue, in two earlier cases decided before *Kimball*, the Court of Customs and Patent Appeals considered whether certain merchandise fell within the ambit of "clasps," as used in paragraph 348 of the Tariff Act of 1922. See *United States v. Murphy & Co.*, 13 Ct. Cust. Appls. 456, 461, T.D. 41348 (1926); *United States v. Clarke & Co.*, 13 Ct. Cust. Appls. 462, 465, T.D. 41349 (1926). Paragraph 348 provided for:

"Snap fasteners and clasps, and parts thereof, by whatever name known, or of whatever material composed, not plated with gold, silver, or platinum and not mounted on tape \* \* \* 55 per centum ad valorem; mounted on tape, including sew-on fasteners, \* \* \* 60 per centum ad valorem."

In both cases the appellate court adopted the definition of the term "clasp" as defined in *Funk & Wagnalls New Standard Dictionary*:

"1. A fastening by which things or the parts of a thing are bound or held together; also, any instrument or bond of con-

. nection, as a tendril, the hook that fastens on an eye, a grappling-iron, etc." *Id.*

Although this definition was also considered by the court in *Kimball*, which held the plastic fasteners to be "clasps," plaintiff, nevertheless, seeks to distinguish the impact of the *Murphy* and *Clarke* decisions by urging that the merchandise in those cases was determined to be "clasps" because it fell within the definition of "fastening," as described by *Funk & Wagnalls*.

The importations in *Murphy* were circular brass spring snaps or clasps used for the purpose of connecting and fastening the ends of necklaces, and those of *Clarke* were dress buckles or dress clasps designed to be worn on apparel or carried on or about or attached to the person. Plaintiff contends that the appellate court in *Murphy* "expressively disavowed the notion that all fasteners are clasps." Finally, plaintiff maintains that *Murphy* and *Clarke* did not deal with the common meaning of the term "clasps," but rather with limitations on and exceptions to the term "clasps." Hence, it submits that these decisions cannot be considered authoritative judicial pronouncements on the common meaning of the term "clasps."

In considering whether the spring snaps or clasps in *Murphy* were dutiable under paragraph 348, or paragraph 1428, which provided for metal jewelry material, the court stated:

"It having been established in this case that the articles in question are fasteners, and that they are known both as clasps and as snap fasteners, and apparently being within the dictionary definitions of such articles, and as they are not plated with gold, silver, or platinum, they are *eo nomine* provided for in paragraph 348, *supra*, as snap fasteners or clasps; and, as the *eo nomine* provision for snap fasteners and clasps is a more specific designation of such articles than the general provision for materials of metal suitable for use in the manufacture of jewelry contained in paragraph 1428, *supra*, they must be held to be properly dutiable under paragraph 348, *supra*. [Citations omitted.]" 13 Ct. Cust. Appls. at 461-462.

Accordingly, plaintiff's contention, that the court considered the merchandise before it as "clasps" merely because it fell within the dictionary definition of "fastenings," is not correct, since the court also found that the merchandise fell within the dictionary meaning of "clasps."

It may be well to note the following comment of the court in *Clarke* on paragraph 348:

"Paragraph 348, *supra*, provides for clasps, by whatever name known, which would include clasps, even if they were known as buckles. These articles [dress buckles-dress clasps] are clasps. They come within the dictionary definition of such articles, and are known as such, as well as buckles." 13 Ct. Cust. Appls. at 465.



The *Clarke* case, therefore, supports the conclusion that the merchandise was considered to be "clasps" since it fell within the *Funk & Wagnalls'* definition of that term.

As to plaintiff's contention that the *Murphy* court disavowed the notion that all fasteners are clasps, defendant has correctly pointed out that the court in *Murphy* "does not state that not all fasteners are clasps," but "rather \* \* \* that not all fasteners are included within paragraph 348." Plaintiff's argument that *Murphy* and *Clarke* are not binding judicial pronouncements on the meaning of the term "clasps" is, therefore, without merit since the court in both cases was required to determine the common meaning of the term. Plaintiff's assertion in the present action, that at no point in *Murphy* or *Clarke* was the description of the merchandise as "clasps" at issue, is incorrect since the appellate court, in both cases, was required to decide whether the merchandise fell within the provision for "clasps" in paragraph 348 of the Tariff Act of 1922.

Based on the definitions of "clasp" used by the appellate court in *Murphy*, *Clarke*, and this court in *Kimball*, the plaintiff states that, while the issue in *Kimball* was whether releasability was an essential characteristic of a "clasp," other material aspects of the definition of "clasp," which were not at issue in *Kimball*, are pertinent to the instant action. It is the crux of plaintiff's argument that consideration in this case of the other "material aspects" of the definition renders the *Kimball* decision erroneous.

The paramount issue presented for decision in the *Kimball* case was the common meaning of the term "clasps." 80 Cust. Ct. at 59-60. It is well established that Congress utilizes the common meaning of a word in the absence of evidence of a contrary commercial designation. *Nylos Trading Co. v. United States*, 37 CCPA 71, C.A.D. 422 (1949). Both parties in this action agree that the common meaning of a tariff term is a question of law. *Schott Optical Glass, Inc. v. United States*, 67 CCPA—, C.A.D. 1239, 612 F.2d 1283 (1979); *Marshall Field & Co. v. United States*, 45 CCPA 72, C.A.D. 676 (1958). It is also agreed that, in determining common meaning, the court will rely upon prior decisions of the courts and the definitions found in dictionaries and other lexicographic authorities. *United States v. Mercantil Distribuidora*, 43 CCPA 111, C.A.D. 617 (1956). The Court of Customs and Patent Appeals has recently stated that "[W]hen Congress has used a term in its everyday sense, dictionary citations are most significant." *United States v. Standard Surplus Sales, Inc.*, 68 CCPA — (slip op. at 6, Dec. 17, 1981), citing *Floral Arts Studio v. United States*, 46 CCPA 21, 26, C.A.D. 690 (1958). The court may accept other evidence, although advisory, upon the issue of common meaning.

Plaintiff's contention that *Kimball* is not controlling raises the issue whether the court's conclusion in that case, based upon its understanding of the lexicographic definition of "clasp," was error.



The question, therefore, is whether *Kimball* was erroneously decided, and is contrary to reason.

In support of its contention, plaintiff objects to the *Funk & Wagnalls'* definition relied upon in *Murphy, Clarke and Kimball*. It states that, without taking into account cross-references and synonyms, the definition was overly broad and meaningless. Plaintiff suggests, moreover, that in considering cross-references and synonyms, the correct definition of "clasp" is actually based upon the manner in which a clasp binds or holds articles together, i.e., by itself closing firmly together.

Plaintiff contends also that the definition of "clasp" in several editions of *Webster's International Dictionary*, and the definition of the cross-referenced term of "catch" in *Webster's* oldest edition, declare the aspect of fastening to be temporary or releasable. Plaintiff also states that the definition of "clasp" contained in the *Oxford New English Dictionary on Historical Principles* (1893) supports, with illustrations, the claim that releasability and refastening are essential components in the definition of "clasp."

The court has before it several samples, and has examined them carefully, among which are plaintiff's exhibits 1-A and 1-B, illustrative samples of the imported merchandise, and plaintiff's exhibit 2, the "Tach-It" gun used to attach them. Samples of merchandise are often potent witnesses. See *United States v. May Department Stores Co.*, 16 Ct. Cust. Appls. 353, T.D. 43090 (1928); *Marshall Field & Co. v. United States*, 45 CCPA 72, C.A.D. 676 (1958). Notwithstanding the voluminous record in this case, plaintiff has not substantiated its contention that the definition in *Funk & Wagnalls* is so broad as to be meaningless. It has not demonstrated that, on examination, one would be unable to identify an article as a clasp by reference to the elements of that definition relied upon by the courts in *Murphy, Clarke and Kimball*. See also *Border Brokerage Co. v. United States*, 2 CIT —, Slip Op. 81-103 (Nov. 16, 1981).

Not only does plaintiff agree that the "Tach-It Barbs" or "Tach-It Nylon Tag Pins" are plastic fasteners, but several of its witnesses were also in agreement with the definition of "clasp" as stated in *Kimball*. Moreover, several of plaintiff's witnesses were unfamiliar with the terms "clasp" and "sew-on fastener," and those who were familiar with the terms were limited in their experience. From the record it is evident that much of the testimony of plaintiff's witnesses is conflicting, and does not establish a uniform meaning throughout the industry for the term "clasps." On the authority of the *Heads and Threads* and *Fung Chong* cases, the testimony of the witnesses for plaintiff, that the plastic fasteners are known as tie lines, strings, attachments and bullets, does not establish that they are not "clasps" within the definition stated in *Kimball*. Moreover, the fact that there are many different types of clasps does not exclude the plastic fasteners at issue from also falling within the common understanding of the term. As stated by our appellate

court in *Marshall Field & Co. v. United States*, 45 CCPA 72, 80, C.A.D. 676 (1958), "[T]he basic rule [is] that common understanding of the meaning of the words controls." Judge Rich, writing for the court, stated that "it is not the business of this court to rewrite the tariff act but rather to apply it in specific situations." *Id.*

Plaintiff's allegation, as to the manner in which a clasp holds materials together, is not persuasive. In support of that contention, plaintiff relies upon the *Funk & Wagnalls'* definition of the verb "clasp," whereas the courts in *Murphy*, *Clarke* and *Kimball* determined the common meaning of the noun "clasp." Although plaintiff has referred to definitions in various editions of *Webster's International Dictionary*, which contain the element of releasability or nonpermanency, it has not refuted the other dictionaries cited by the defendant which state that releasability is not included in the definitions of the term "clasps." For example, in *A Standard Dictionary of the English Language*, Funk & Wagnalls Co. (1910), at page 494, a "clasp" is defined as:

"1. A fastening by which things or the parts of a thing are bound or held together; also, any instrument or bond of connection, as a tendril, the hook that fastens on an eye, a grappling-iron, etc.

Thus, plaintiff has not borne its burden of proof that the conclusion in *Kimball*, that a clasp need not be releasable and must merely fasten or join two parts or things, is in error and should not control the present case.

#### *Sew-on Fastener Issue*

On the sew-on fastener issue, there is no dispute that the imported plastic fasteners are used to attach or fasten materials. At issue is whether the fasteners are affixed by a procedure which would establish them as "sew-on fasteners." The question, therefore, is whether the process of affixing the fastener is a sewing operation.

Several decisions of this court have discussed the sewing process: *Dolliff & Co. v. United States*, 65 Cust. Ct. 681, 687, C.D. 4158, 319 F. Supp. 1392 (1970), *aff'd*, 59 CCPA 101, C.A.D. 1047, 458 F.2d 146 (1972); *Hauser & Reisfeld, Inc. v. United States*, 39 Cust. Ct. 66, C.D. 1906 (1957); *Amberg, Schwab & Co. v. United States*, 64 Treas. Dec. 433, T.D. 46701 (1933). These cases are in accord with the definition of "sewing" as found in *Webster's Third New International Dictionary of the English Language* (1966):

"1a: to unite, attach, or fasten by stitches made with a flexible thread or filament."

"Stitch" is defined as follows:

"2: a single complete in-and-out movement of a threaded needle in sewing, embroidering, or suturing \* \* \*."

In *Amberg*, the earliest case decided by this court wherein many definitions of "sewing" were examined, it was stated that—

"a fair construction of the word 'sew' would be that a needle, awl, or *other tool* must be used, and that the needle, awl, or *other tool* used must actually puncture or penetrate the fabric being sewn, as contradistinguished from lacing or looping the thread, twine, wire, or *other flexible material being used*, actually passing through each puncture or penetration made in the fabric being sewn, by the needle, awl, or *other tool* used. Of course, the fabric thus sewn must be united, joined, or attached." (Emphasis added.) 64 Treas. Dec. at 436.

In holding that certain hemp hats were not sewn hats, within the meaning of paragraph 1504 of the Tariff Act of 1930, the court stated further:

"[T]here is no indication in said paragraph 1504 that Congress intended to give to the word 'sew' a limited or narrow meaning, yet, to hold that the mere passing of a thread, twine, wire, or other flexible material between the loops on the edges of a certain fabric was 'sewing' we think would be entirely too broad a construction to place on the word 'sew.'" *Id.*

To determine what is "sewing" in a particular case, in addition to testimony of record which the court regards as credible and reliable, the court must look to prior decisions of the courts and definitions found in dictionaries. *United States v. Mercantil Distribuidora*, 43 CCPA 111, 117, C.A.D. 617 (1956).

On the question of what constitutes a sewing operation, the court has relied upon the testimony of Professor Irwin Kahn of the Fashion Institute of Technology. Professor Kahn testified that he taught at the Fashion Institute "anything and everything that relates to apparel manufacturing, production, and management." Professor Kahn is also the chairman of the Apparel Production Management Department, and has been a superintendent of operations, a plant manager, a factory engineer, as well as a consultant to his industry.

In his precise, authoritative and well-considered testimony, Professor Kahn defined sewing, as he had done previously in the *Kimball* case, as "the placing together of two materials or more and the keeping of them in place to each other by the introduction of a third substance drawn by a needle." He stated with firmness and conviction that, when the fasteners at issue are affixed to fabric, the process of attachment is "sewing," and that the fasteners are, therefore, "sew-on fasteners." According to Professor Kahn's testimony on the definition of "sewing" in the present case, it does not matter whether a substance is *drawn* or *pushed* by a needle when being worked through another substance. Since the plastic fasteners are attached by a needle which pushes them through other material, he, therefore, considered the operation to be a "sewing" process. Although Professor Kahn broadened his definition of

"sewing," there is no doubt that the fastening devices at bar meet the elements of Professor Kahn's prior definition of sewing, as well as the expanded definition. The court has found the expert testimony of Professor Kahn, that the plastic fasteners are "sewn on," to be credible, reliable and persuasive.

Plaintiff contends that the mechanism which draws or pushes the fasteners through various materials is not a needle and, in support, cites *In re G. W. Sheldon & Co.*, 32 Treas. Dec. 502, T.D. 37176 (1917), for the proposition that an instrument, to be a needle, must have an eye. The opinion of the Board of General Appraisers in that case discussed the definition of needle in the context of what was understood to be a traditional sewing machine. The imported merchandise in that case was a looping machine, which punched holes in paper, inserted therein a piece of cord, and tied both things together, forming a loop by which calendars and other articles could be hung from walls. The Board sustained the classification of the imported merchandise as manufactures of metal, denying classification as sewing machines under paragraph 441 of the Tariff Act of 1913, as claimed. The Board noted that the loops made were not stitches, as that term was commonly understood, and that the merchandise consisted merely of a looping machine. Since the machine did not contain a needle, the discussion by the Board, in its opinion decided in 1917, as to the necessity for a needle to have an eye, was at best *dicta*.

In the present case, the court is not required to determine whether the "Tach-It" gun is a sewing machine, but whether the plastic fasteners, which are inserted by the "Tach-It" gun by means of a needle, are sew-on fasteners for tariff purposes.

According to the definitions in *Webster*, a stitch results from the single, complete in-and-out movement of a needle with thread or filament. It is important to note that *Webster's* definition of "sewing" makes no mention of a needle and, therefore, there is no necessity for an eye of a needle to be part of the sewing process. Moreover, the *Encyclopaedia Britannica* (15th ed.), volume VII at page 240, which defines a sewing needle, makes no mention of an eye:

"The sewing needle is small, slender, rodlike, with a sharply pointed end to facilitate passing through fabric and with the opposite end slotted to carry a thread."

It adds that—

"[t]he earliest iron needles, dating to the 14th century, had no eye but had a closed hook to carry the thread."

The opinion in the *Amberg* case, in defining "sewing," likewise does not mention that a needle with an eye is essential, but states that an "awl or other tool must be used \* \* \* [to] puncture or penetrate the fabric being sewn." From all of the foregoing, it is evident that a needle is generally understood to be a pointed, slender

instrument and that a needle need not contain an eye unless it is necessary for the use of the particular needle. Traditional methods of sewing have utilized needles with an eye in order for the thread or filament to be introduced into a fabric, especially in the case of the traditional sewing machine. In the expanding technology of the sewing process, however, it is apparent that other items have replaced eyes in needles, such as the "pronged slits" in the *Hauser* case, and the *grooves* of the needle in the "Tach-It" gun in the instant case, and that they have served to introduce a thread or filament into the articles united, attached or fastened.

It is also important to note that the parties, in a stipulation executed before trial, have conceded that: (1) the plastic fasteners in issue are inserted into a "fastening device, or 'gun,' which is equipped with a hollow slotted or grooved *needle*"; (2) "the *needle* is inserted into or through the articles and the plastic fastener is propelled the length of the *needle*, thereby penetrating the articles"; and (3) the "*needle* is then withdrawn, and the plastic fastener remains inserted through the articles." (Emphasis added.) Since the parties have agreed that the plastic fasteners are inserted by a needle, the fact that the needle contains no eye is not crucial in the present case. Moreover, in the plaintiff's promotional material for the "Tach-It" guns, as represented by plaintiff's collective exhibit 12, many references are made to the needles of the guns, their advantages, instructions on their use, and to the fact that they come in six styles. Other exhibits produced at the trial also expressly refer to the "needle" of the attaching devices. The plaintiff's argument, that the mechanism which draws or pushes the fasteners is not a needle, is, therefore, without merit.

Plaintiff's contention that the fasteners, which are the materials affixed by the "Tach-It" fastening device, cannot be considered thread, is also without merit. It is refuted by the existence of the single *filament* shaft of the imported merchandise, and by numerous references in other exhibits to the plastic fastener as a "*filament*." Not only is thread defined as a filament or fiber of a ductile substance, but the definition of "sew," as indicated above, includes a *filament* as one of the substances used to "unite, attach, or fasten by stitches."

The contention by plaintiff, that "sewing" must contain the elements that have in the past been traditionally associated with that function, fails to acknowledge the technological changes in the industry which have made numerous advances in the sewing process. This was established at the trial not only by testimony of defendant's witnesses, but also by that of plaintiff's witnesses. For example, defendant's witness, Mr. Gerard Merseur, general manager of the fastener division of the Dennison Manufacturing Company, identified defendant's collective exhibit "G" as items that were part of an emerging technology for sewing which utilize plastic fasteners in the sewing process. Mr. Merseur substantiated the testimo-

ny of Mr. Paul Kirschner, another witness for the defendant, that plastic fasteners replaced "hand finishers doing hand sewing."

Mr. Merser was in charge of new products development at Dennison and was co-inventor of the Swiftach System, supervising all phases of development, testing, sales and marketing. The Swiftach System comprises a gun which is a scissors-activated type of attaching device as distinguished from the pistol-grip version of the "Tach-It" gun. Mr. Merser testified, however, that the action contained within the operating means is basically similar, and that though there are differences in design between the fasteners of both guns, in essence they function in the same way. He referred to the fastener of the Swiftach System as a plastic filament and stated that the use of the Dennison gun and plastic fasteners could be considered a sewing operation. Mr. Merser concluded, "The reason I call it a sewing operation is that the fastener itself is applied using a sewing function, utilizing a needle; it utilizes filament; it utilizes, if I may call them for a moment, knots at the end of the filament, which means are used to secure the stitch, if you will. So, the Swiftachment sewing fastener is a sewing operation." At another point in his testimony, he described the filament as "the elongated part of the fastener."

Mr. Merser also described how a needle functions in a traditional sewing machine, and testified that it was comparable to the operation of a plastic fastener "[b]ecause the plastic fastener is sewn into the material by pushing the needle through the material. The needle contains the thread and the end is also the securing means or the knot. It is an advancement of the art, in a sense." The court has placed great weight on the testimony of Mr. Merser, an acknowledged expert in the industry based on his long and extensive experience in marketing and manufacturing activities of the Dennison "Swiftach" machine and fasteners. Mr. Merser was without hesitation in his testimony that the imported fasteners were sew-on fasteners.

Mr. Allen Clements, who was responsible for the purchase of the merchandise on the invoices in this case, in testifying for the plaintiff, acknowledged an advertisement of his firm which advertised the imported merchandise as follows: "If you can sew it with the sewing needle, you can tag it with a "Tach-It." Against the background of a demonstration by Mr. Merser during the trial, in which he sewed a seam inside a jacket with a three-inch fastener, this statement in the advertisement by Mr. Clement's firm, as evidenced by exhibit 12, is no exaggeration. It is clear from the demonstration that the fastener was attached by a sewing operation which included a needle and a filament.

Although the use of the plastic fastener is a more efficient, economical and speedier method of attaching or fastening tags than previous methods, the record is replete with examples of many other uses. Thus, the plastic fasteners are used to hold the facing



to the front of a coat; to attach a scarf or hat to the back of a coat; to hold a pleat of a garment together; to form loops for belts; to sew the fabric onto the frame of an umbrella; to close open wounds or openings in cadavers during autopsies; to sew buttons onto garments; to join and to pair articles; to hold pleats in curtains and draperies during the cleaning process; to sew skirts on hangers to prevent their slippage; and to sew the mesh and other components together before being installed in catalytic converters of automobiles. With respect to their use in tagging and pairing merchandise, Mr. Merser testified that, in the industry, the persons responsible for sewing the tags to merchandise are called "tag sewers."

In the toy industry, in addition to attaching tags in the process of packaging, the plastic fasteners are used to attach clothing to stuffed toys and to create faces on the toys. In the animal world, veterinarians use the plastic fasteners for suturing, and in the fish industry they are used for biological studies. In the air conditioning and air purification industry, the fasteners are sewn into filter bags to prevent the bags from opening. It is clear, therefore, that in addition to their use as tag fasteners, the imported merchandise functions as fasteners of many items, and for many purposes.

In addition to defendant's collective exhibit "G," defendant's collective exhibit "S," which contains promotional and instructional material for products of Dennison Manufacturing Company, also illustrates the changes taking place in the process of sewing. Many references are made in both exhibits to plastic fasteners as having replaced the original method of sewing. For example, the instructional matter of exhibit "G-A," which consists of plastic filaments that are inserted through buttons and fabric, and then locked in place, states: "For the fashions you *sew* and the buttons you replace \* \* \* now you'll never have to *sew* on a replacement or an original button again." Defendant's exhibit "S-D," advertising material for the Swiftach Systems described by Mr. Merser, speaks of saving "up to 50% of the attaching time now expended in old fashioned 'string and clip' tagging, *sewing* or *clasping* operations." (Emphasis added.)

Another example of new methods in the sewing process is an instant button attacher called "Buttoneer Plus," represented by defendant's exhibit "K," in which it is stated that "[b]uttoneer fasteners are made of tough synthetic filament" and that *sewing* is among their several uses. It also describes how the Buttoneer can accomplish a hidden *stitch* on garments with double layers of fabric. In describing exhibit "G-A," Mr. Merser testified that, in sewing a button to a garment by the use of the plastic filaments, it is not necessary that a traditional stitch be performed in the sense of having to use a needle and thread, nor that a traditional knot secure the button. The instructional material for exhibit "G-A" also describes how to "thread filament."

The plastic fasteners were classified under the *eo nomine* designation of "sew-on fasteners." Although the meaning of that term is determined as of the time of enactment of the tariff act, it nevertheless embraces "articles subsequently created which come within its scope." *Sears, Roebuck and Co. v. United States*, 46 CCPA 79, 82, C.A.D. 701 (1959). As stated by Chief Judge Markey in *United States v. Standard Surplus Sales, Inc.*, *supra*:

"Tariff terms are written for the future as well as the present, *United States v. L. A. Salomon & Bro.*, 22 CCPA 490, 495, T.D. 47483 (1935), meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the Statute. *Smillie & Co. v. United States*, 12 Ct. Cust. Appls. 365, 367, T.D. 40520 (1924)." 68 CCPA at — (slip op. at 7).

Plaintiff argues that the issue is whether the process of attaching the "Tach-It" fasteners is sewing, and not whether the "Tach-It" fastening device is a sewing machine. However, plaintiff has not presented any evidence that the court considers credible and persuasive upon which it could find that the process of attaching the fasteners is not sewing or a sewing operation. Although much of plaintiff's testimony emphasizes that sewing is a skilled craft, it is not necessary that all forms of sewing demand the same skill, and nowhere does the definition of sewing require that it be done by hand, or by any specific type of mechanical device.

In the present case, as in *Kimball*, the defendant has not merely relied upon the presumption of correctness that attaches to the classification of the customs officials, but has come forward with credible, reliable and persuasive evidence in support of that classification. The court finds the witnesses for the defendant to be credible and reliable. On the other hand, the court finds the testimony of plaintiff's witnesses to be contradictory, largely repetitive and cumulative of the testimony in the prior *Kimball* case. From the foregoing, the court is therefore not convinced that it was error for customs officials to classify the imported plastic fasteners as "sew-on fasteners" under item 745.63.

In view of the vigorous efforts of counsel in this case, it is well to place the question presented in proper perspective. What is at issue is the classification, for customs duty purposes, of certain plastic fasteners. That they are plastic fasteners, and that they are the same as those that were at issue in the *Kimball* case, has been admitted. Their classification as "sew-on fasteners" under item 745.63 TSUS, by statute, is presumed to be correct, and the burden to prove otherwise is placed upon the plaintiff. 28 U.S.C. § 2635(a). After trial by competent and experienced counsel in the field of customs law, the court, in *Kimball*, held that the plaintiff failed to discharge its burden of proof that the plastic fasteners were not "sew-on fasteners." In essence, faced with seriously conflicting tes-



timony, the court found the testimony of defendant's witness to be credible and persuasive, and held that the presumption of correctness of the classification had not been rebutted. See *Ameliotex, Inc. v. United States*, 77 Cust. Ct. 72, 83-84, C.D. 4673, 426 F. Supp. 556 (1976), *aff'd*, 65 CCPA 22, C.A.D. 1200, 565 F.2d 674 (1977).

In the present litigation, the parties have created a more expansive record, and have submitted voluminous briefs and exhibits. The basic issue, however, remains the same: have the plastic fasteners been improperly classified for customs duty purposes, and has plaintiff rebutted the presumption of correctness which, by statute, attaches to their classification? On this crucial question the court has once again concluded that, over and above the presumption of correctness, it has been persuaded by the testimony of defendant's witnesses that the classification should be sustained. In sum, a most thorough consideration of the testimony of the witnesses, as well as the numerous exhibits, has led the court to conclude that plaintiff has not rebutted the presumption of correctness, nor has it made a "clear and convincing show of error" in the holding of the *Kimball* case. See *United States v. Dodge & Olcott, Inc.*, 47 CCPA 100, 103, C.A.D. 737 (1960).

#### *Executive Order 12032*

Rather than eroding the decision in *Kimball*, as plaintiff seeks by a holding that the administrative determinations by Customs in *Kimball* and here were in error, the court must acknowledge the clearly manifested intention of Congress as to the articles embraced under item 745.63, TSUS, as evidenced by the President's Executive Order 12032. Under that order, dated December 27, 1977, item 745.63 was superseded by items 745.61 and 745.62, TSUS, as follows:

<i>"Sew-on fasteners and parts thereof:</i>		
745.61	<i>Of Plastics, in clips suitable for use in a mechanical attaching device.</i>	27.5% ad val.
745.62	Other .....	27.5% ad val. [Emphasis added.]"

The President's Executive Order, issued under the authority of the Trade Act of 1974, Pub. L. No. 93-618, coincided with the decision in *Kimball*, which reached the same result in holding the plastic fasteners at issue to be "sew-on fasteners." Although that order cannot be said to have adopted the holding in *Kimball*, since it predated *Kimball* by two months, Congress did not overrule the President's action nor the holding in *Kimball* when it clearly could have done so in subsequent tariff legislation. No change was mandated as to the new item 745.61, TSUS, by the Trade Agreements Act of

1979, nor during the staged duty rate modifications with respect to that item in Presidential Proclamation 4707 of December 11, 1979.\* As stated in *United States v. Great Pacific Co.*, 23 CCPA 319, 324, T.D. 48192 (1936), "A common meaning, having been established once and determined by a court, will be presumed to continue until the language is changed by subsequent legislation." See also *United States v. Schmidt Pritchard & Co.*, 47 CCPA 152, C.A.D. 750, cert. denied, 364 U.S. 919 (1960); *United States v. E. Dilligham, Inc.*, 41 CCPA 221, C.A.D. 555 (1954). Since the holding of the court in *Kimball* was consistent with the Presidential action and subsequent tariff legislation, it cannot be said that *Kimball* was clearly erroneous.

It is pertinent that there is a long history in the field of international commerce for Congress to delegate power to the President to carry out legislation policy. See *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928); *Field v. Clark*, 143 U.S. 649 (1892), and the discussion of those and other relevant cases in *Star-Kist Foods, Inc. v. United States*, 47 CCPA 52, 56-58, C.A.D. 728 (1959). In *United States v. Yoshida International, Inc.*, 63 CCPA 15, 22, C.A.D. 1160, 526 F.2d 560 (1975), the Court of Customs and Patent Appeals observed that "Congress, beginning as early as 1794 and continuing into [the Trade Act of] 1974 has delegated the exercise of much of the power to regulate foreign commerce to the Executive." In considering the correctness of the *Kimball* decision, this court, therefore, must accord appropriate deference to Presidential action which finds authority in specific statutes. In the recent case of *Zenith Radio Corp. v. United States*, 437 U.S. 443 (1978), in which the Supreme Court upheld a determination by the Treasury Department that a remission of a certain Japanese tax was not a bounty or grant within the purview of section 303 of the Tariff Act of 1930, as amended, the court, quoting *Udall v. Tallman*, 380 U.S. 1, 16 (1965), stated: "When faced with a problem of statutory construction, this Court show great deference to the interpretation given the statute by the officers or agency charged with its administration."

Although the plaintiff vigorously contests the classification of the plastic fasteners as "sew-on fasteners," it is clear that the administrative action of Customs coincided with the Presidential action which superseded item 745.63 with item 745.61 which classifies as "sew-on fasteners" plastic fasteners "in clips suitable for use in a mechanical attaching device." Indeed, it would be difficult to describe the plastic fasteners at bar with greater precision than their description in item 745.61. Since Executive Order 12032 adopted and ratified the prior practice by Customs, it cannot be said that the court's holding in *Kimball* was unreasonable for clearly erroneous.

\* The present rate of duty for items 745.61 and 745.62 is 24.8% ad valorem.

Based upon the testimony of defendant's expert witnesses, both in *Kimball* and in the present case, the Presidential action and legislative ratification, it is the court's conclusion that the holding in *Kimball* is not clearly erroneous, but is *stare decisis* of the present action. See *United States v. Rembrandt Electronics, Inc.*, 64 CCPA 1, 5, C.A.D. 1175, 542 F.2d 1154 (1976). The present item 745.61 resolves all doubt that it is the legislative intent to classify the imported plastic fasteners as "sew-on fasteners." Furthermore, in upholding the classification of the plastic fasteners as "sew-on fasteners" under item 745.63, the imported merchandise is being classified under the tariff provision which most specifically describes it in accordance with General Interpretative Rule 10(c).

### *Summary*

In summary, the court has concluded that plaintiff has failed to prove a commercial designation for the plastic fasteners at issue different from the common meaning for "clasps" as determined by prior court holdings.

Plaintiff has also failed to discharge its burden of proving the holding in *Kimball* to be erroneous. Beyond the statutory presumption of correctness, the defendant has presented testimony that the court has found both credible and reliable that the method of affixing the "Tach-It" fasteners is by a process that is a sewing operation.

It is the determination of the court that the plaintiff has not discharged its burden of proving error in the classification of the imported plastic fasteners under item 745.63 of the tariff schedules. The classification is consequently sustained.

Judgment will be entered accordingly.

# Decisions of the United States Court of International Trade

## *Abstracts*

## *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, April 19, 1982.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P82/39	Re, C.J. April 14, 1982	S. Betesh & Co. Inc.	80-12-00195	Item 706.24 20%	Item 706.23 6.5%	Agreed statement of facts	New York Handbags
P82/40	Re, C.J. April 14, 1982	Felix L. Mates, a/c Gold- man, Antonetti & Da- villa	80-4-00677	Item 662.50 5%	Item A662.50 Duty free under the GSP	Agreed statement of facts	San Juan Mechanical appliances; prod- ucts of eligible beneficiary country
P82/41	Re, C.J. April 14, 1982	Sugihara Trading of Cali- fornia	79-6-00991	Item 653.95 8.5%	Item A653.95 Duty free under the GSP	Agreed statement of facts	New York Stainless steel mixing bowls
P82/42	Re, C.J. April 14, 1982	Teledyne Semiconductor, Inc.	77-4-00637	Item 687.60 6% Appraised on basis of constructed value	Item 897.00 With allowance in duty based upon full value of merchandise as set forth in schedule B attached to decision and judgment, less allowance for yielded cost or value of prefabricated die of U.S. origin as indicated in schedule B; revised dutiable value, set forth in schedule B, subject to duty rate of 6% under item 887.60	U.S. v. Texas Instruments, Inc. (C.A.D. 1178)	San Francisco; Los Angeles American goods returned, in- tegrated circuits

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/43	Re, C.J. April 14, 1982	George Woloch Co., Inc.	80-2-00244	Item 405.25 1.4¢ per lb. and 9%	Item 793.00 Duty free	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) Merchandise described in entries 78-146449, 78-146450, 78-148131, and 78-148132
P82/44	Watson, J. April 14, 1982	All Channel Products Corp.	72-11-02217, etc.	Item 685.90 10% or 8.5%	Item 685.20 6% or 5%	All Channel Products Corp. v. U.S. (Slip Op. 81-8, Jan. 16, 1981)	New York Parts of television apparatus
P82/45	Watson, J. April 14, 1982	Rembrandt Electronics, Inc.	67/89193, etc.	Item 685.90 17.5% or 15.5%	Item 685.20 10% or 9%	All Channel Products Corp. v. U.S. (Slip Op. 81-8, Jan. 16, 1981)	New York Parts of telephone apparatus
P82/46	Watson, J. April 14, 1982	Rembrandt Electronics, Inc.	68/25859, etc.	Item 685.90 17.5% or 15.5%	Item 685.20 10% or 9%	All Channel Products Corp. v. U.S. (Slip Op. 81-8, Jan. 16, 1981)	New York Parts of television apparatus

# Decisions of the United States Court of International Trade

## *Abstracts* *Abstracted Reappraisement Decision*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/210	Re, C.J. April 12, 1982	Howard Hartney Inc., s/c Amcan Inc. et al.	R64/51, etc.	Export value	Net appraised values less 7¼% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Plywood
R82/211	Re, C.J. April 12, 1982	Oregon Pacific Plywood Corp. et al.	R61/13119, etc.	Export value	Net appraised values less 7¼% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Plywood
R82/212	Re, C.J. April 12, 1982	Pacific Wood Products Co. et al.	R61/10386, etc.	Export value	Net appraised values less 7¼% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Plywood
R82/213	Re, C.J. April 12, 1982	Charles A. Redden Inc., s/c Georgia- Pacific Corp., et al.	R61/5016, etc.	Export value	Net appraised values less 7¼% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/214	Watson, J. April 12, 1982	Allied Linen Importing Co., Inc., et al.	290879-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule A merchandise) Appraised values less 7.5% thereof, net packed (schedule B merchandise)	Agreed statement of facts	New York Damask sets, tablecloths, etc.
R82/215	Watson, J. April 12, 1982	W. J. Byrnes & Company, a/c L.S. Bitterman & Co.	R60/2334, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Binoculars
R82/216	Watson, J. April 12, 1982	Elliot Knitwear Corp.	R60/21516, etc.	Export value	F.o.b. unit invoice prices (where f.o.b. unit prices are not disclosed by invoices) plus 20% of difference between f.o.b. unit prices shown on invoices and f.o.b. unit invoice prices shall be regarded as f.o.b. unit invoice prices) plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Gloves, mittens, and sweaters
R82/217	Watson, J. April 12, 1982	Henry A. Wess, Inc.	R58/20634, etc.	Export value	F.o.b. unit prices consisting of f.o.b. unit invoice prices as shown in entry documents, less amount importer states in a letter with entry documents he expects to receive, plus 20% of difference between resultant f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Cincinnati (Cleveland) Prism binoculars



R82/218	Watson, J. April 12, 1982	Henry A. Wess, Inc.	R61/22405, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Cincinnati (Cleveland) Binoculars
R82/219	Watson, J. April 13, 1982	W. J. Byrnes & Co., a/c C & H Company	R58/24139	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Seattle Binoculars
R82/220	Watson, J. April 13, 1982	W. J. Byrnes & Co., a/c Deitch Bussan Kaisha, Ltd.	R59/5211	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Seattle Binoculars
R82/221	Watson, J. April 13, 1982	Bruce Duncan Co., Inc., a/c The Ruby Importing Co.	R60/3510, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Binoculars
R82/222	Watson, J. April 13, 1982	Bruce Duncan Co., Inc., a/c Lloyd Trade Co.	R60/19561	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Binoculars
R82/223	Watson, J. April 13, 1982	Durst Manufacturing Co., Inc.	287772-A, etc.	Export value	F.o.b. unit invoice prices indicated in entry docu- ments as being the actual prices, plus 20% of difference between said actual f.o.b. prices and appraised values, net packed	Agreed statement of facts	New York Elbows, malleable fittings, etc.
R82/224	Watson, J. April 13, 1982	Grayson Robinson Photo Supply, Inc.	R59/17035, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values, net packed	Agreed statement of facts	New York Binoculars

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/225	Watson, J. April 13, 1982	Harpers International, Inc.	R58/24618, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Binoculars
R82/226	Watson, J. April 13, 1982	Hoyt Shepton & Sciaroni, a/c Bushnell International, Inc.	264898-A	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Binoculars
R82/227	Watson, J. April 13, 1982	F.H. Kaysing	R58/16312, etc.	Export value	F.o.b. unit prices consisting of actual prices, net packed, agreed prices as indicated in entry documents (less appraised values of the cases), plus 20% of difference between said actual or agreed prices (less appraised values of the cases) and appraised values, net packed	Agreed statement of facts	Kansas City (St. Louis) Binoculars
R82/228	Watson, J. April 13, 1982	Morse Sewing Machine	R60/2780, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads
R82/229	Watson, J. April 13, 1982	Peerless Camera Stores	R58/28831, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values, net packed	Agreed statement of facts	New York Binoculars

R82/220	Watson, J. April 13, 1982	F.M. Saydah & Bros.	278781-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values (schedule A merchandise) Appraised values less 7.5% thereof, net packed (schedule B merchandise)	Agreed statement of facts	New York Danaak sets, tablecloths, cotton drawn work, etc.
R82/221	Watson, J. April 13, 1982	United Silver & Cutlery Co.	R65/16690	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Los Angeles Flatware
R82/222	Watson, J. April 13, 1982	Henry A. Wess, Inc.	R60/14017, etc.	Export value	F.o.b. unit prices consisting of the various f.o.b. unit invoice prices, less refund promised import- ers, as shown on entry documents, plus 20% of difference between result- ant unit prices and ap- praised values, net packed	Agreed statement of facts	Cincinnati (Cleveland) Prism Binoculars
R82/223	Re, C.J. April 14, 1982	Geo. S. Bush & Co. Inc., a/c C. Roth & Co., et al.	R82/7327, etc.	Export value	Net appraised values less 7½% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Plywood
R82/224	Re, C.J. April 14, 1982	Charlestown Overseas Fwd. Inc. et al.	293544-A, etc.	Export value	Net appraised values less 7½% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston, S.C. Plywood
R82/225	Re, C.J. April 14, 1982	M.S. Cowen Co. Inc. et al.	R62/8476, etc.	Export value	Net appraised values less 7½% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Plywood
R82/226	Re, C.J. April 14, 1982	Davies Turner & Co. et al.	R60/17790, etc.	Export value	Net appraised values less 7½% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Plywood
R82/227	Re, C.J. April 14, 1982	Dorf International Inc.	295280-A	Export value	Net appraised values less 7½% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/238	Re, C.J. April 14, 1982	Getz Bros. & Co. et al.	R60/8507, etc.	Export value	Net appraised values less 7 1/4% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Plywood
R82/239	Re, C.J. April 14, 1982	C. Itoh & Co. (American Inc. et al.)	R63/8578, etc.	Export value	Net appraised values less 7 1/4% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Plywood
R82/240	Re, C.J. April 14, 1982	Mitsubishi International Corporation	73-3-00646, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	San Juan Footwear
R82/241	Re, C.J. April 14, 1982	Mitsubishi International Corporation	74-5-01161	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Toledo (Cleveland) Footwear
R82/242	Re, C.J. April 14, 1982	Mitsubishi International Corporation	76-6-01555, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Jacksonville (Tampa) Footwear
R82/243	Re, C.J. April 14, 1982	Mitsubishi International Corporation	80-4-00630, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Savannah Footwear
R82/244	Re, C.J. April 14, 1982	C.H. Powell Co., a/c Oregon Pacific Plywood Corp., et al.	R60/22828, etc.	Export value	Net appraised values less 7 1/4% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Plywood
R82/245	Re, C.J. April 14, 1982	Random House, Inc.	78-5-00796, etc.	Constructed value	Values, packed, indicated on schedule of cases attached to decisions and judgment	Agreed statement of facts	New York Film negatives
R82/246	Re, C.J. April 14, 1982	Toyomenka, Inc., et al.	R62/2549, etc.	Export value	Net appraised values less 7 1/4% thereof, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Plywood

R82/247	Ford, J. April 14, 1982	J. E. Bernard & Co., Inc.	75-1-00078	Export value	At prices paid by original equipment manufacturer as set forth under "OEM Price" column in schedule attached to de- cision and judgment	J. E. Bernard & Co., Inc. v. U.S. (C.D. 4850)	Chicago Parts of aircraft environ- mental control systems
R82/248	Ford, J. April 14, 1982	J. E. Bernard & Co., Inc.	75-1-00079	Export value	At prices paid by original equipment manufacturer as set forth under "OEM Price" column in schedule attached to de- cision and judgment	J. E. Bernard & Co., Inc. v. U.S. (C.D. 4850)	Chicago Parts of aircraft environ- mental control systems
R82/249	Ford, J. April 14, 1982	J. E. Bernard & Co., Inc.	75-2-00374	Export value	At prices paid by original equipment manufacturer as set forth under "OEM Price" column in schedule attached to de- cision and judgment	J. E. Bernard & Co., Inc. v. U.S. (C.D. 4850)	Chicago Parts of aircraft environ- mental control systems
R82/250	Watson, J. April 14, 1982	W. J. Byrnes & Company, s/c General International Corp.	R61/12103	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Seattle Binoculars
R82/251	Watson, J. April 14, 1982	Durst Manufacturing Co., Inc.	R61/11483, etc.	Export value	F.o.b. unit invoice prices, or f.o.b. price indicated in entry documents as being actual price or price as per actual in- voice, plus 20% of differ- ence between f.o.b. unit prices and appraised values, net packed	Agreed statement of facts	New York Malleable iron pipe fit- tings, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/252	Watson, J. April 14, 1982	Elliot Knitwear Corp.	R61/18567, etc.	Export value	F.o.b. unit invoice prices (where f.o.b. unit prices are not disclosed by invoices, the ex factory unit prices shown on invoices shall be regarded as the f.o.b. unit invoice prices) plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sweaters, gloves, and mit- tens
R82/253	Watson, J. April 14, 1982	Elliot Knitwear Corp.	R62/1332, etc.	Export value	F.o.b. unit invoice prices (where f.o.b. unit prices are not disclosed by invoice, the ex factory unit prices shown on invoices shall be regarded as the f.o.b. unit invoice prices) plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sweaters and gloves
R82/254	Watson, J. April 14, 1982	F.H. Kaysing	R59/7571, etc.	Export value	F.o.b. unit invoice prices indicated in entry documents as actual or agreed prices (less appraised values of the cases) plus 20% of difference between f.o.b. unit invoice prices and appraised values, net packed	Agreed statement of facts	Kansas City (St. Louis) Binoculars

R82/255	Watson, J. April 14, 1982	Jake Levin & Son, Inc.	R59/12799, etc.	Export value	F.o.b. unit prices, consisting of actual prices, or agreed prices, as indicated in entry documents (less appraised values of the cases), plus 20% of difference between said actual or agreed prices (less appraised values of the cases) and appraised values, net packed	Agreed statement of facts	Kansas City (St. Louis) Binoculars
R82/256	Watson, J. April 14, 1982	United Silver & Cutlery Co.	R59/18678, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule A merchandise) Appraised unit values less 7.5% thereof, net packed (schedule B merchandise)	Agreed statement of facts	Los Angeles Flatware
R82/257	Watson, J. April 14, 1982	United Silver & Cutlery Co.	R65/14124, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule A merchandise) Appraised unit values less 7.5% thereof, net packed (schedule B merchandise)	Agreed statement of facts	Los Angeles Flatware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/258	Watson, J. April 14, 1982	Henry A. Wess, Inc.	273815-A, etc.	Export value	F.o.b. invoice prices as shown in entry documents, plus 20% of difference between f.o.b. unit invoice prices and appraised values, net packed (schedule A merchandise)  Appraised unit values less 7.5% thereof, net packed (schedule B merchandise)  F.o.b. unit prices consisting of actual prices or agreed prices, as indicated in entry documents (less appraised values of the cases), plus 20% of difference between said actual or agreed prices (less appraised values of the cases) and appraised values, net packed (schedule C merchandise)	Agreed statement of facts	Cincinnati (Cleveland) Binoculars
R82/259	Watson, J. April 14, 1982	Henry A. Wess, Inc.	R58/16340, etc.	Export value	F.o.b. unit invoice prices consisting of various f.o.b. unit invoice prices, less refund promised importer as shown in entry papers, plus 20% of difference between resultant prices and appraised values, net packed (schedule A merchandise)  Appraised values less 7.5%, net packed (schedule B merchandise)	Agreed statement of facts	Cincinnati (Cleveland) Binoculars



R82/260	Watson, J. April 14, 1982	Henry A. Weiss, Inc.	R89/19245, etc.	Export value	F.o.b. unit invoice prices as shown on entry documents, or as the "price quoted by the shipper" (less appraised values of the cases) as indicated in entry documents, plus 20% of difference between said prices and appraised values, net packed	Agreed statement of facts	Cincinnati (Cleveland) Prism binoculars
R82/261	Watson, J. April 14, 1982	John L. Westland & Son, Inc.	R61/13928	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R82/262	Maletz, J. April 14, 1982	Wichimen Co., Inc.	R69/12687	Export value	Invoice unit values shown on entry papers	International Seaway Trading Corp. v. U.S. (C.D. 473)	New Orleans Hightop canvas sneakers

# International Trade Commission Notices

*Investigations by the U.S. International Trade Commission*

DEPARTMENT OF THE TREASURY, APRIL 29, 1982

The appended notices of relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

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## Investigation No. 104-TAA-9

*Notice of Suspension of Countervailing Duty Investigation Concerning Michelin X-Radial Steel Belted Tires From Canada; Cancellation of Public Hearing, and Request for Public Comment on Termination of Investigation*

AGENCY: United States International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979 and notice of cancellation of public hearing and suspension of investigation pending public comment.

FOR FURTHER INFORMATION CONTACT: Mr. William Schechter, Office of Investigations, telephone 202-523-0300.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On January 2, 1980, the Commission received a request from the Michelin Tire Corporation for the review of the countervailing duty order on Michelin X-radial steel belted tires from Canada (T.D. 73-10). The Commission

instituted this investigation on March 11, 1982 and published notice of such institution in the Federal Register of March 16, 1982 (47 F.R. 11341). The notice also scheduled a public hearing for this investigation on May 13, 1982, in Washington, D.C.

The Commission received a letter on April 21, 1982 from counsel for the Rubber Manufacturers Association, the original petitioner for the countervailing duty order, withdrawing its petition for a countervailing duty order on Michelin X-radial steel belted tires from Canada, with the express proviso that the withdrawal be considered without prejudice to the filing of any future petition or petitions.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a section 104(b) investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

Section 704(a) directs the Commission to solicit public comment prior to termination of an investigation and approve the termination only if it is in the public interest. In light of the Commission's duty to consider the public interest, the Commission requests written comments from persons concerning the proposed termination of the investigation on Michelin X-radial steel belted tires from Canada. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register.

This countervailing duty investigation concerning Michelin X-radial steel belted tires from Canada is suspended for the duration of the 30-day public comment period. Further, the public hearing scheduled for 10:00 a.m., May 13, 1982, in the U.S. International Trade Commission Hearing Room is cancelled and will be rescheduled pending review of public comment.

By order of the Commission.

Issued: April 23, 1982.

KENNETH R. MASON,  
*Secretary.*

In the Matter of  
CERTAIN THERMAL CONDUCTIVITY  
SENSING GEM TESTERS AND  
COMPONENTS THEREOF

} Investigation No. 337-TA-100

*Notice of Termination of Investigation Based on a Settlement  
Agreement*

AGENCY: U.S. International Trade Commission.

**ACTION:** Termination of the investigation based on a settlement agreement.

**SUPPLEMENTARY INFORMATION:** Complainants Ceres Electronics Corp., Adams-Smith, Inc. and MSB Industries, Inc., respondents Brunit Trading AB, Presidium Diamonds Pte Ltd. (Singapore), Presidium, Inc., Gem Instruments Corp., and Gemological Institute of America, and the Commission investigative attorney moved to terminate this investigation on the basis of a settlement agreement.

On February 10, 1982, the Commission published a notice in the Federal Register requesting comment from the public and interested Federal agencies on the settlement agreement (47 F.R. 6118). No comments were received.

On April 8, 1982, the Commission terminated this investigation on the basis of the settlement agreement. The Commission concluded that such termination would not adversely affect the public interest.

Notice of the institution of this investigation was published in the Federal Register of May 20, 1981 (46 F.R. 27586).

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

**FOR FURTHER INFORMATION CONTACT:** Scott Daniels, Esq., U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0074.

By order of the Commission.

Issued: April 16, 1982.

KENNETH R. MASON,  
*Secretary.*

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#### Investigation No. 731-TA-91 (Preliminary)

##### SODIUM NITRATE FROM CHILE

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection therewith.

**SUMMARY:** The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-91 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the

United States is materially retarded, by reason of imports from Chile of sodium nitrate, provided for in item 480.25 of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

**EFFECTIVE DATE:** April 12, 1982.

**FOR FURTHER INFORMATION CONTACT:** Mr. Woodley Timberlake, Office of Investigations, U.S. International Trade Commission; telephone 202-523-4618.

**SUPPLEMENTARY INFORMATION:**

*Background.*—This investigation is being instituted in response to a petition filed April 12, 1982, on behalf of Olin Corporation. The Commission must make its determination in the investigation within 45 days after the date of the filing of the petition, or in this case by May 27, 1982. The investigation will be subject to the provisions of part 207, subpart B, of the Commission's Rules of Practice and Procedure (19 CFR 207).

*Written submissions.*—Any person may submit to the Commission on or before May 10, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen (14) copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data will be available for public inspection.

*Conference.*—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., on May 4, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the investigator for this investigation, Mr. Woodley Timberlake, telephone 202-523-4618, not later than April 27, 1982, to arrange for their appearance.

*Inspection of the petition.*—The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

By order of the Commission.

Issued: April 16, 1982.

KENNETH R. MASON,  
Secretary.

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In the Matter of  
DOXYCYCLINE

} Investigation No. 337-TA-3

*Notice of Denial of Motion To Modify Exclusion Order*

AGENCY: U.S. International Trade Commission.

ACTION: Denial of motion to modify exclusion order.

SUPPLEMENTARY INFORMATION: On April 12, 1979, the Commission issued an order prohibiting the importation into the United States of doxycycline falling within claim 10 of U.S. Letters Patent 3,200,149 for the remaining term of the patent except under license. That order is now in force.

On September 2, 1981, Agvar Chemicals, Inc. filed a motion with the Commission seeking modification of the doxycycline exclusion order to permit the importation of small quantities of doxycycline to be used for the purpose of obtaining Food and Drug Administration certification under 21 U.S.C. 357, and not for sale to the consuming public.

On April 12, 1982, the Commission denied the motion of Agvar Chemicals, Inc. to modify the doxycycline exclusion order.

FOR FURTHER INFORMATION CONTACT: Lairold M. Street, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0124.

By order of the Commission.

Issued: April 16, 1982.

KENNETH R. MASON,  
*Secretary.*

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